IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-02-2005

CORAM:

THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

S.A.No.106 of 1994

Parvathi ...Appellant

-vs-

1. Valliyammal

2. Canara Bank,
Basur Branch rep.by its
Manager,
Basur, Erode, Periyar District.

... Respondents

PRAYER: The Second Appeal is filed under section 100 of C.P.C. against the judgment and decree dated 2.8.1993 made in A.S.No.79/93 on the file of the Principal Subordinate Judge, Erode, reversing the judgment and decree dated 30.1.1992 made in O.S.No.497 of 1985 on the file of the Principal District Munsif, Erode.

For Appellant : Mr.V.P.Sengottuvel

For 1st Respondent : Mr.V.Narayanasami

For 2nd Respondent : Mr.V.Bhiman for
Mr.V.Kunjithapadam

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J U D G M E N T

The Second Appeal is directed against the judgement dated 2.8.1993, of Sub-Court, Erode in its A.S.No.79 of 1993 in dismissing the suit which itself was against the decree dated 30.1.1992 passed by the District Munsiff, Erode in O.S.No.497 of 1985.

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2. While admitting the second appeal, the following questions of law were framed:

> " i) Whether the lower Appellate Court is right in reversing the judgement and decree of the trial court without holding its findings on facts and evidence on record as wrong; and
>
> ii) Whether the lower appellate court is right in presuming that the late Sengoda Gounder would not have intended to grant his share of the account to the plaintiff, while the defendants have not pleaded or shown any other reason for the late Sengoda Gounder to open an account jointly with his daughter who was unmarried at that time and all his other children were married and settled."

3. The suit was filed by the appellant/plaintiff, directing the first defendant Canara Bank to pay the accrued interest to herself and for permanent injunction, restraining the bank from depositing the accrued interest into the savings bank account of his father, deceased Sengoda Gounder.

4. There was a fixed deposit receipt dated 5.7.1984 found in the name of Sengoda Gounder and his youngest daughter Parvathy, the plaintiff herein with an arrangement of payment to either or survivor. The fixed deposit was for three years and the date of maturity was mentioned as 4.7.1987. It is in the meantime, on 5.9.1984, as found in Ex.A2, death certificate, Sengoda Gounder expired. The accrued interest was arranged to have been deposited in the Savings Bank Account of Sengoda Gounder, even while he was alive. That arrangement was made by both the depositors with the bank. There was a tripartite agreement in between two depositors on the one side and the bank on the other side, in and by which the accrued interest over the deposited amount will be deposited in the Savings Bank Account of Sengoda Gounder and for the residue in the F.D.R. will be disposed of according to the principle of either or survivor.

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5. This tripartite agreement holds good, even as per the following statement made in Tannan's Banking Law and Practice in India, 18th Edition (Re-print 1996) wherein, at page 195, it is said thus:

> " Banks have now accepted the view that in an account, where the operation is by "Either or Survivor", the survivor is the

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only person who is entitled to the balance thereof after the death of one of the account holders. This practice is based on the principle that the terms of operation form part of the contract of deposit."

This has been reproduced and argued in a case law cited in 1997-3-L.W. 673 (Govindan Chettiar (Died) vs. Akilandam alias Seethalakshmi and 24 others). It was held therein as follows:

" I do not thing, the said statement by the learned Author has any relevance to this case. Those cases relate to the interpretation of contract between the bank and the customer, and the Bank gets discharged when it makes payment to the survivor.

When an inter se dispute arises as to the ownership or beneficiary of the amount, that ownership has to be proved de hors the receipt.....' Either or Survivor' account will not make the survivor the beneficiary or the owner of the amount. It only enables the survivor to collect the amount as Trustee for the other heirs. From the mere opening of an account as 'Either or Survivor', an inference should not be made that the survivor is entitled to collect and appropriate the entire amount for himself."

Therefore, the arrangement of payment to either or survivor in a tripartite agreement will only enable the bank to dispose of the amount and when rivalry between the depositors comes, this Court have held uniformly that unless there is proof of gift by one of the depositors to the other and upon the death of one of the depositors who had gifted, the other cannot draw the amount in the capacity of a survivor. Thus the intended advancement in favour of either depositor cannot be presumed and should be proved by way of act of gift.

6. This was fortified in 1996-2-L.W. 474 (Kushaldas and eight others vs. Mohanarangam and another), wherein also, there was nothing to show that the deceased depositor wanted to make over the amount to the surviving depositor and there was nothing to show that the depositor gifted the same to the survivor. In that case also a substantial question of law for consideration arose and the same is as follows:

" When the amount deposited in "either or survivor" account is under the full control of the depositor, till his death,

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> will it mean that the depositor has gifted the same to the survivor, in the absence of any specific gift? "

It was held that gift was to be pleaded and proved.

7. Two other case laws were also dealt with in support of the derivations made therein. Those cases are (ILR 55 Cal. 944 = AIR 1928 PC 172) Guran Ditta Vs. Ram Ditta and the other case law is Pandit Pushkar Nath 71 Ind App 1997 = (AIR 1945 PC 10) . It was held in the first case as follows:

> " The deposit made by a Hindu of his money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife. There is resulting trust in his favour in the absence of proof of a contrary intention, there being in India no presumption of an intended advancement in favour of a wife."

The same view was expressed by the Judicial Committee in the second cited case above mentioned. (AIR 1945 PC 10).

8. The counsel for the appellant/plaintiff drew my attention to (AIR 1962 ANDHRA PRADESH 260) Dalavai Nagarajamma vs. State Bank of India, Cuttapah and others, wherein also it was mentioned that on the death of one of the depositors, the resultant factor is trust and the money becomes absolute property of deceased and is payable to his heirs in the absence of contrary intention. It was further mentioned that there is a resulting trust in his favour in the absence of proof of a contrary intention, there being no presumption of intended advancement in favour of the other person. In the instant case, there is no pleading or proof or any document showing that Sengoda Gounder has gifted in favour of Parvathy, one of the heirs, while Sengoda Gounder had two sons and four daughters.

9. The Counsel for the appellant/plaintiff again submitted ((2004) 8 Supreme Court Cases 498) Anumati Vs. Punjab National Bank, wherein in para 12 it was mentioned as follows:

> "12. ... The fixed deposit receipt is merely a written acknowledgement by the bank that it holds a certain sum to the use of its customers and that the bank is thus a debtor to the account-holders in respect of the amount deposited – a debt which is repayable by the bank to the account-holders with interest on expiry of an agreed period.

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> An "either or survivor" clause in such an account means that the amount payable by the bank on maturity of fixed deposit may be paid to either of the account-holders by the bank in order to obtain a valid discharge."

Thus, it is found that it is only in order to obtain a valid discharge under a tripartite agreement, the bank may be right in disbursing the amount to the survivor. But, when once controversy arose, inter se the depositors, then, we have to anticipate a gift deed and as mentioned in the cases cited earlier, there being no presumption of intended advancement in favour of the other person in India. Unless there is a gift, the survivor can only receive the amount as a trustee of the surviving other heirs of the deceased depositor and the surviving depositor cannot have any exclusive interest over the same simply because it was deposited under the scheme "Either or Survivor".

10. Again, the counsel for the appellant/plaintiff relief upon observation found in (2 S.C.R. 297) Shanti Prasad Jain Vs. The Director of Enforcement. In (1963) S.C.R. Page 324, which is found as follows:

> "Now the law is well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not trustee and beneficiary."

It is only an assertion of the earlier view that in pursuance of tripartite agreement, in order to decide the amount, this position will hold good. As and when dispute inter se depositors arose, then proof of gift of the deceased depositor in favour of the survivor depositor is a must and unless it is available, the surviving depositor may have to receive it only as a trustee of the existing heirs and not exclusively on her behalf.

11. Counsel for the first defendant Bank also relied on a decision cited in Kinkar Santananda Sanyasi Vs. State Bank Of India and others (AIR 2002 ORISSA 114), wherein two case laws were referred and they were reported as (AIR 1971 SC 1962) Indranarayan v. Roop Narayan and another and (AIR 1937 Lahore 196 (2) at p. 198) Bakshi Tek Chand J., in Mt.Charjo vs. Dina Nath. In the first case, the Hon'ble Supreme Court has held as follows:

> "8. .....
> "The transfer with which we are concerned in this case cannot be gift

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because Dr.Pandit continued to be the owner of the amounts in question till his death. There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfer in question are genuine and further that Dr.Pandit intended that the amounts in question should go to the 1st defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted."

It remains no more in doubt that a person holding a succession certificate and receives the deposited amount, and keeps the money with him as a trustee on behalf of the persons who have a claim in the said amount."

12. In the above cited other case law, it was held that inspite of issuance of a succession certificate, the holder of the succession certificate was not entitled to receive exclusively for himself and he should have only authority to give valid discharge on behalf of other heirs.

13. In para 10 of the judgement of the above case law, AIR 2002 ORISSA 114, the following observation was made.

"10. A deposit by a person of his money in the Bank in the joint names of himself and another person and the terms that it is payable to either or survivor does not on ones' death constitute a gift by him. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being no presumption of intended advancement in favour of another person. Therefore, on his death, the amount in deposit is payable to his heirs as absolute property."

14. Now after going through the case laws cited, the position of law is well understood, that in the absence of a gift pleaded and proved, the survivor of fixed deposit receipt will not be entitled to realise the amount exclusively for herself and what is made in the prayer of the appellant/plaintiff is, about her exclusive right and that cannot be allowed. The appellant/ plaintiff was rightly non-suited and there is nothing to interfere in the judgement of the first appellate court.

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10. Hence, the second Appeal is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To
1. The Principal Subordinate Judge,
   Erode. (with records)

2. The Principal District Munsif,
   Erode.

3. The Section Officer
   V.R.Section, High Court, Madras.

1 cc to Mr. V. Kunjithapatham,Advocate, Sr. 4844
1 cc to Mr. V. Narayanaswami, Advocate, SR. 4818
1 cc to Mr. V.P. Sengottuvel, Advocate, SR. 4524

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